

WASHINGTON, DC 20510

July 17, 2019

The Honorable Kevin K. McAleenan
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary McAleenan,

We write to urge you to use authorities in use as of June 30, 2019, to implement Operation Safe Return, a pilot program to rapidly, accurately, and fairly determine those families who have crossed the southern border that clearly do not have a valid legal claim and safely return them to their home countries. Through this program, we expect that we can meet our commitments to humanitarian protections while ensuring proper efficiency, timeliness, order, and fairness in the credible fear screening process. We also expect that Operation Safe Return will help us examine current process deficiencies, identify required increases in capacity, and understand the drivers of migration.

As you know, the United States is facing unprecedented challenges at our southern border. The number of family member units and unaccompanied alien children crossing the southern border is overwhelming our immigration system, putting children and adults at serious risk. In fiscal year 2014, when 137,000 family member units and unaccompanied alien children crossed into the United States and were apprehended at the southern border, President Obama declared a "humanitarian crisis". In the first eight months of fiscal year 2019, more than 389,000 family member units and unaccompanied alien children already have entered the United States and been apprehended at the southern border, averaging over 3,000 each day in May 2019 alone.

We have worked with your agencies to develop a streamlined process to rapidly, accurately, and fairly determine those family units that do not have a valid legal claim and safely return those individuals to their home countries. The process would use existing authorities, but surge necessary resources to a limited, particular location on the southern border. Operation Safe Return would involve the following steps:

- Program enrollees shall comprise inadmissible family units, including all members of the family unit identified when taken into custody that were encountered between the ports of entry through the duration of the program within a limited area of U.S. Border Patrol jurisdiction with the exception of individuals with a serious medical condition which would inhibit their ability to participate in the legal proceedings. Individuals that have unlawfully reentered the United States, were removed or departed voluntarily while under an order of exclusion, deportation, or removal, or those convicted of one or more aggravated felonies shall be excluded from this pilot program.

- Within approximately 1 to 3 days of being encountered between the ports of entry at a selected pilot location, U.S. Border Patrol should conduct detailed, fair and accurate interviews with the participants regarding their reasons for coming to the United States. U.S. Border Patrol should have access to adequate translation services to ensure effective communication. Family member units that do not claim fear and therefore are not referred for a credible fear screening will be subject to immediate, expedited removal to their home country.

- Family member units that do claim fear will be told they will receive a credible fear interview after at least a 48-hour waiting period that the participant can waive, and will be provided with Form M-444 describing the credible fear process and a list of pro bono legal counsel. If migrants do not speak English, Form M-444 shall be provided to the family unit in their native language or language of fluency. DHS officials shall confirm that the migrants comprehend the information provided.

- Within approximately 4 days of being encountered between ports of entry, family units (including both parents if encountered together as a family unit, unless doing so would be contrary to the well-being of the family) should be processed and receive a medical exam within 12 hours of arrival at the appropriate facility; children must be screened by a pediatrician, pediatrician physician assistant, pediatric nurse practitioner, or pediatric nurse who has access to the facility at all times. Family units shall be provided fair access to available non-governmental attorneys or waive access within 48 hours.

- As soon as possible, but within approximately 9 days after being encountered, United States Citizenship and Immigration Services Asylum Officers shall conduct a credible fear interview, prioritizing in-person interviews as resources allow. Adequate translation services shall be provided to all family units and no interviews shall be conducted without appropriate translation services. The initial interview by the U.S. Border Patrol shall be considered by the asylum officer, but is not by itself determinative.

- Within approximately 1 day of the credible fear interview, the credible fear interview determination should be transmitted to the Department of Homeland Security and Department of Justice.

- The Department of Justice should ensure prompt and complete review of any negative credible fear determination requested by a family unit within approximately 2 to 4 days of receiving the file. The initial interview by the U.S. Border Patrol shall be considered by the immigration judge, but is not by itself determinative.

- Within approximately 15 days after being encountered, the Department of Homeland Security should remove family units whose negative credible fear determinations are affirmed by the immigration judge.

- Family units who are found to have a credible fear during the process will be referred for removal proceedings, which include an opportunity to file an asylum claim, and shall be enrolled in an alternatives to detention program as resources allow, unless an individual

presents a danger to persons or property, are a threat to the national security, or pose a risk of flight.

- The Secretary of Homeland Security shall notify the Senate Committee on Homeland Security and Governmental Affairs weekly about the Department's ability to meet the specified removal timeframes.

- The Secretary of Homeland Security shall work with appropriate consulate offices to ensure the expedited processing of travel documentation for those to be removed.

- Significant modifications to this process should be made in consultation with the committee.

The Department of Homeland Security and Department of Justice in consultation with the Senate Committee on Homeland Security and Governmental Affairs should develop metrics to measure the effectiveness of Operation Safe Return and share the data on a weekly basis with Congress. Additionally, the Government Accountability Office, Department of Homeland Security, and Department of Justice Office of Inspector General, working with your agencies and this committee, should carry out a review and analysis of Operation Safe Return concurrent with its implementation.

Thank you for your attention to this matter. If you have any questions, please contact Brian Kennedy on Chairman Johnson's staff and Eric Bursch on Senator Sinema's staff.

Sincerely,

Ron Johnson
Chairman
Committee on Homeland Security &
Governmental Affairs

Kyrsten Sinema
United States Senator

Rob Portman
United States Senator

Joe Manchin III
United States Senator

James Lankford
United States Senator

Doug Jones
United States Senator

Michael B. Enzi
United States Senator

John Barrasso
United States Senator

John Cornyn
United States Senator

cc: Secretary of State Michael R. Pompeo